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Martin A. Kenner

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EXAMINER

OSMAN, RAMY M

ART UNIT

PAPER NUMBER

2157

NOTIFICATION DATE

DELIVERY MODE

09/09/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 09/821,190	Applicant(s) KENNER ET AL.	
	Examiner RAMY M. OSMAN	Art Unit 2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-9,12-26,28-34,36-41,43 and 45-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-9,12-26,28-34,36-41,43 and 45-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

This communication is in response to amendment filed May 30, 2008 where applicant amended claims 1,18,32,45. Claims 1-4,6-9,12-26,28-34,36-41,43,45-48 are pending.

Response to Arguments

1. Applicant's arguments filed 5/30/2008 with respect to the claims have been fully considered and are found to be partially persuasive.

1a. The objection to claims 6,7,28 is withdrawn.

2. On pages 15-17, Applicant argues that claims 1,32,45 comply with 35 USC 112 first paragraph in light of the amendments and in light of paragraph 26 of the specification.

In reply, the amended limitation has been placed in the preamble and is not accorded any patentable weight. The preamble limitation is not limiting because it is not clearly tied to any particular steps of the claim. The limitation "once the network enabled device is started" should be rewritten into the body of the claim prior to the steps of "automatically, without user intervention" in order for the claim to be given the proper context as mentioned within paragraph 26 of the specification and in order to comply with the written description requirement.

3. On pages 17-19, Applicant argues that claim 18 complies with 35 USC 112 first paragraph in light of paragraphs 29-30 of the specification.

In reply, Applicant argues that the graphical element is the note 22 which is posted on web page 20 and is then downloaded. This is persuasive and Examiner withdraws 112 first rejection of claim 18.

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4. On pages 19-21, Applicant argues that claims 46-48 comply with 35 USC 112 first paragraph in light of paragraphs 47 and 54 of the specification.

In reply, This is persuasive and Examiner withdraws 112 first rejection of claims 46-48.

5. On pages 21-24, Applicant argues that Apfel does not teach claim 1 for example, and does not teach automatically requesting content and automatically receiving content.

In reply, Apfel does teach this. In at least 2 locations Apfel discloses where it is the computer (ref# 20) itself which initiates a query to begin downloading and receiving content(column 7 lines 4-9 and column 10 lines 52-54). This is a clear example of the computer performing a task (i.e. HTTP request) automatically.

6. On pages 24-26, Applicant argues that the limitation "without user intervention" is synonymous with "automatically" and is not taught by Apfel.

In reply, In a broad sense, any computer implemented method must involve some sort of automation. Whenever a user inputs a command into a computer, the computer begins to process that command in an automated fashion. The claims have failed to clearly outline where manual interaction ends and where computer automation begins. Claim 1 for example states "automatically... initiate request". This can still be interpreted as a user first manually inputting a command to request data and then secondly the computer executing a series of instructions in an automated manner which actually requests the data. The automation would be the computer communicating via a common protocol with a remote computer to effectually request and download data. The user at that point has nothing to do with the underlying protocol communications between computers. And so the computer is thus automatically downloading

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data from the remote computer because the user isn't manually directing the computer during every step of the protocol communication.

The claim language must clearly state where manual interaction ends and where automation begins.

7. On pages 28-31, Applicant argues that Crill does not teach claim 18.

In reply, Applicant's amendment to claim 18 has removed features that were previously rejected under 112 first paragraph and that was argued by Applicant. The amendment to claim 18 has broadened its scope to an extent where even downloading a simple web page can read as anticipating it. See below rejection.

8. On pages 35-36, Applicant argues that Apfel does not teach claim 32 particularly receiving the second code at the recipient.

In reply, since Applicant is referring to the actual code that executes the steps of accessing and receiving content, then it is an inherent feature of Apfel that this code must be electronically loaded (i.e. received) firstly into the hard drive of computer 20 of Apfel and then loaded (i.e. received) into dynamic memory of Apfel in order to perform execution of the code.

9. On pages 37-40, Applicant argues that Apfel does not teach claim 45 and reiterates the previous arguments mentioned above.

In reply, see the above response to arguments that were reiterated by Applicant.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10a. Claims 1,32,45 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1, for example, recites "automatically, without user intervention, initiate a request for the posted content;". Since paragraph 26 of Applicants specification does mention instances of user intervention, then the scope of this claim is seen to not comply with the written description requirement. The preamble limitation "once the network enabled device is started" should be rewritten into the body of the claim prior to the steps of "automatically, without user intervention" in order for the claim to be given the proper context as mentioned within paragraph 26 of the specification and in order to comply with the written description requirement.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. **Claims 1-4,6-9,17,43 and 46 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Ballard (US Patent No 6,473,756).**

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13. ***In reference to independent claim 1***, Apfel teaches a method performed on a network enabled device at a content recipient once the network enabled device is started, comprising:

executing first program code at the content recipient so as to identify a content provider having posted content of interest to the content recipient (column 6 lines 40-45, Apfel discloses identifying a server (i.e. provider) that has content of interest);

executing second program code at the content recipient so as to automatically, without user intervention, initiate a request for the posted content (column 7 lines 4-9 and column 10 lines 52-54, Apfel discloses the local computer sending a query (i.e. request) to the server (i.e. provider) for an update (i.e. content));

executing third program code at the content recipient so as to automatically, without user intervention, receive the posted content at the content recipient in response to execution of the second program code (column 10 lines 61-63, Apfel discloses downloading the content); and

Although Apfel teaches providing an indirect notice that the content was downloaded by updating the registry (column 11 lines 1-5), Apfel fails to explicitly teach executing fourth program code at the content recipient so as to *display* a notice to the content recipient that the posted content has been received at the content recipient in response to execution of the second and third program code, and so as to visually display the posted content in response to user action. However, Ballard discloses displaying a message to a user indicating that a download is complete for the purpose of keeping the user informed as to the status of their request (Ballard, column 7 lines 1-7). Ballard also discloses that the downloaded file itself can be displayed, which is of course in response to the user search for the file.

It would have been obvious for one of ordinary skill in the art to modify Apfel by providing a notice to the content recipient that the posted content has been received at the content recipient as per the teachings of Ballard for the purpose of keeping the user informed as to the status of their request.

As for its dependent claims:

14. In reference to claim 2, Apfel teaches the method of claim 1 further comprising canceling future requests for the posted content without communicating such an intent to the content provider (column 8 lines 30-36, Apfel discloses cancelling auto-update feature).
15. In reference to claim 3, Apfel teaches the method of claim 1 wherein the executing of the second program code at the content recipient so as to automatically initiate a request for the posted content comprises executing second program code at the content recipient so as to automatically and recurrently initiate requests for the posted content (column 8 lines 22-33, Apfel discloses periodic updating).
16. In reference to claim 4, Apfel teaches the method of claim 3 further comprising canceling future requests for the posted content without communicating such an intent to the content provider (column 8 lines 30-36, Apfel discloses cancelling auto-update feature).
17. In reference to claim 6, Apfel teaches the method of claim 5 further comprising canceling future requests for the posted content without communicating such an intent to the content provider (column 8 lines 30-36, Apfel discloses cancelling auto-update feature).
18. In reference to claim 7, Apfel teaches the method of claim 5 wherein the executing of the second program code at the content recipient so as to automatically initiate a request for the posted content comprises executing second program code at the content recipient so as to

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automatically and recurrently initiate requests for the posted content (column 8 lines 22-33, Apfel discloses periodic updating).

19. In reference to claim 8, Apfel teaches the method of claim 7 further comprising canceling future requests for the posted content without communicating such an intent to the content provider (column 8 lines 30-36, Apfel discloses cancelling auto-update feature).

20. In reference to claim 9, Apfel teaches the method of claim 1 further comprising executing fifth program code at the recipient so as to provide notice to the content recipient that no posted content has been received by the content recipient in response to execution of the second program code (column 9 lines 40-48, Apfel discloses a “NOUPDATE” message that notifies the recipient that there is no new content).

21. In reference to claim 17, Apfel teaches the method of claim 1, electronically receiving the second program code at the content recipient from the content provider (column 6 line 63 – column 7 line 9).

22. In reference to claim 43, Apfel teaches the method of claim 1, further comprising executing fifth program code at the content recipient so that, upon an action related to the notice, the posted content is displayed to a user (Ballard column 7 lines 1-7, see above rationale).

23. In reference to claim 46, Apfel teaches the method of claim 1, wherein they are performed without providing an e-mail address of the content recipient to the content provider (column 8 lines 45-55, Apfel disclose a query which does not involve email address of the recipient).

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24. Claims 12,13,15,16 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Ballard (US Patent No 6,473,756) in further view of Stephens (US Patent No 6,557,026).

25. In reference to claim 12, Apfel teaches the method of claims 1. Apfel fails to teach wherein executing third program code so that the posted content, when received, is displayed behind a session if the session is active. However, Stephens teaches where information can be viewed on a computer by the use of overlaying windows in front of each other. Stephens discloses outputting a window to a display even though the window will not be visible to a user where the user can later be alerted of its presence (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60). It would have been obvious for one of ordinary skill in the art to modify to display a window (i.e the posted content) behind an active window as per the teachings of Stephens so as to later be alerted of its presence.

26. In reference to claim 13, Apfel in view of Stephens teach the method of claim 12, wherein the executing of the fourth program code at the content recipient comprises executing the fourth code so as to display the notice even if the session is active (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60, see above rationale).

27. In reference to claims 15,16, Apfel in view of Stephens teach the method of claim 13 above. Apfel fails to explicitly teach wherein the method further comprises executing fifth program code at the content recipient so that, upon an action related to the notice, the posted content burns through the session so that the posted content is visible to a user; and comprises executing fifth program code at the content recipient so that, upon an action related to the notice, the posted content is displayed in front of the session so that the posted content is visible to a

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user. However, Stephens teaches overlaying windows for multiple active programs. Stephens discloses bringing a window layer to the front of all other layers so that the layer can then be visible to a user (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60).

It would have been obvious for one of ordinary skill in the art to modify to display a window (i.e the posted content) in front of an active window as per the teachings of Stephens so as to be alerted of its presence.

28. Claim 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Ballard (US Patent No 6,473,756) in further view of Stephens (US Patent No 6,557,026) in further view of Beyda et al (US Patent No 6,636,965).

In reference to claim 14, Apfel in further view of Stephens teach the method of claim 13. Apfel fails to explicitly teach wherein the notice is an icon. However, Beyda teaches recipients receiving electronic messages. Beyda discloses icons accompanying the messages for the purpose of alerting users of the message (Abstract and column 4 lines 10-20). It would have been obvious for one of ordinary skill in the art to modify Apfel by making the notice an icon as per the teachings of Beyda complete messages for the purpose of alerting users of the message.

29. The text of the relevant sections of Title 35, U.S. Code §103 is cited above.

30. Claims 18,19,26,28-31,47 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454).

31. *In reference to independent claim 18*, Apfel teaches a computer readable medium, storing code, when executed by a computing device, performs the following functions:

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automatically initiating a request for download of not previously received content available from a content provider (column 7 lines 4-9, Apfel discloses the local computer sending a query (i.e. request) to the server (i.e. provider) for an update (i.e. content element)); and

receiving the content in response to the request (column 7 lines 4-9 & 33-34, Apfel teaches downloading upgrade components for a program).

Apfel fails to explicitly teach that the content is a viewable software posted note content. However, downloading viewable content is old and well-known in the art. For example, simply downloading a web page satisfies viewable content. Another example, is downloading skins and GUI elements for programs which are also considered viewable.

Therefore, it would have been obvious for one of ordinary skill in the art to modify Apfel wherein the content is a viewable content for the purpose of downloading only what is specifically needed to update a program. In this case, the program component of Apfel that would be updated is the skin or updated GUI components of the program, and would be for the purpose of facilitating the download of only a specific type of content that is needed.

As for its dependent claims:

32. In reference to claim 19, Apfel teaches the computer readable storage medium of claim 18, wherein the code provides notice that the posted content has been received in response to the request (column 11 lines 1-5, Apfel provides an indirect notice that content was received via an update to the registry).

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33. In reference to claim 26 Apfel teaches the computer readable storage medium of claim 18, wherein the stored code when executed, automatically and recurrently initiate requests for the posted content (column 8 lines 22-33, Apfel discloses periodic updating).

34. In reference to claim 28 Apfel teaches the computer readable storage medium of claim 27, wherein the stored code when executed, automatically and recurrently initiate requests for the posted content (column 8 lines 22-33, Apfel discloses periodic updating).

35. In reference to claim 29, Apfel teaches the computer readable storage medium claim 18, providing notice that no posted content has been received in response to the request (column 9 lines 40-48, Apfel discloses a “NOUPDATE” message that notifies the recipient that there is no new content).

36. In reference to claim 30, Apfel teaches the computer readable storage medium of claim 18 wherein the stored program code is electronically received from the content provider and is stored by the computer readable storage medium (column 6 line 63 – column 7 line 9).

37. In reference to claim 31, Apfel teaches the computer readable storage medium of claim 30 wherein the remote site is the content provider (column 6 line 63 – column 7 line 9).

38. In reference to claim 47, Apfel teaches the computer readable storage medium of claim 18, wherein without providing an e-mail address of the content recipient to the content provider (column 8 lines 45-55, Apfel disclose a query which does not involve email address of the recipient).

40. **Claims 22 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Ballard (US Patent No 6,473,756).**

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41. In reference to claim 22, Apfel teaches the computer readable storage medium of claim 18 above. Although Apfel teaches providing an indirect notice that the content was downloaded by updating the registry (column 11 lines 1-5), Apfel fails to explicitly teach executing fourth program code at the content recipient so as to *display* a notice to the content recipient that the posted content has been received at the content recipient in response to execution of the second and third program code. However, Ballard discloses displaying a message to a user indicating that a download is complete for the purpose of keeping the user informed as to the status of their request (Ballard, column 7 lines 1-7).

It would have been obvious for one of ordinary skill in the art to modify Apfel by providing a notice to the content recipient that the posted content has been received at the content recipient as per the teachings of Ballard for the purpose of keeping the user informed as to the status of their request.

42. **Claims 20,21,24,25 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Stephens (US Patent No 6,557,026).**

43. In reference to claim 20, Apfel in view of Crill teach the computer storage medium of claim 18. Apfel fails to teach wherein executing third program code so that the posted content, when received, is displayed behind a session if the session is active. However, Stephens teaches where information can be viewed on a computer by the use of overlaying windows in front of each other. Stephens discloses outputting a window to a display even though the window will not be visible to a user where the user can later be alerted of its presence (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60). It would have been obvious for one of ordinary skill

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in the art to modify to display a window (i.e the posted content) behind an active window as per the teachings of Stephens so as to later be alerted of its presence.

44. In reference to claim 21, Apfel teaches the computer readable storage medium of claim 20, wherein the code provides notice that the posted content has been received in response to the request (column 11 lines 1-5, Apfel provides an indirect notice that content was received via an update to the registry).

45. In reference to claims 24 and 25, Apfel teaches the computer readable storage of claim 18 above. Apfel fails to explicitly teach burning the posted content the posted content through a session so that the posted content is visible to a user; and displaying the posted content in front of the session so that the posted content is visible to a user. However, Stephens teaches overlaying windows for multiple active programs. Stephens discloses bringing a window layer to the front of all other layers so that the layer can then be visible to a user (column 2 lines 3-11 & 53-67 and column 10 lines 20-67). It would have been obvious for one of ordinary skill in the art to modify to display a window (i.e the posted content) in front of an active window as per the teachings of Stephens so as to be alerted of its presence.

46. Claims 23 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in further view of Beyda et al (US Patent No 6,636,965).

In reference to claim 23, Apfel in view of Crill teach the computer readable storage medium of claim 18. Apfel fails to explicitly teach wherein the notice is an icon. However, Beyda teaches recipients receiving electronic messages. Beyda discloses icons accompanying the messages for the purpose of alerting users of the message (Abstract and column 4 lines 10-20). It would have been obvious for one of ordinary skill in the art to modify Apfel by making the

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notice an icon as per the teachings of Beyda complete messages for the purpose of alerting users of the message.

Claim Rejections - 35 USC § 102

47. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

48. Claims 32-34,40,41,45,48 rejected under 35 U.S.C. 102(b) as being anticipated by Apfel et al (US Patent No 5,974,454).

49. ***In reference to independent claim 32***, Apfel teaches a method comprising:

executing first program code at content provider so as to post content for access by a content recipient (column 5 line 62 – column 6 line 2 and column 6 lines 23-25, Apfel discloses Internet sites (i.e. providers) hosting program components (i.e. content) for access by local computers (i.e. recipients));

executing second program code on a network enabled device at content recipient following start up of the network enabled device so as to automatically, without user intervention, (i) access the content provider (column 7 lines 4-9, Apfel discloses the local computer sending a query (i.e. request) to the server (i.e. provider)) and (ii) initiate receipt by the content recipient of the posted content if the posted content is new (column 6 line 63 – column 7 line 9, Apfel discloses initiating a request and download if an upgrade is available (i.e. if content

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is new). The limitation "following start up" is broad and is an inherent feature of Apfel because computer 20 of Apfel must first be started before any code is executed);

executing third program code at the content provider so as to send a message notifying the content recipient that the posted content is not new (column 9 lines 40-48, Apfel discloses a "NOUPDATE" message that notifies the recipient that there is no new content); and

electronically receiving the second program code at the content recipient (it is an inherent feature of Apfel that this code must be electronically loaded (i.e. received) firstly into the hard drive of computer 20 of Apfel and then loaded (i.e. received) into dynamic memory of Apfel in order to perform execution of the code).

50. ***In reference to independent claim 45***, Apfel teaches a method on a network enabled device at a content recipient after the network enabled device is started, comprising:

executing first program code at content recipient so as to identify a content provider having posted content of interest to the recipient (column 6 lines 40-45, Apfel discloses identifying a server (i.e. provider) that has content of interest);

executing second program code at content recipient so as to automatically, without user intervention, initiate a request for the posted content and to automatically, without user intervention, download the posted content if the posted content is not new (column 6 line 63 – column 7 line 9 and column 10 lines 48-63, Apfel discloses initiating a request and download if an upgrade is available (i.e. if content is new)); and

executing third program code at the content recipient so as to receive a notice that the content provider has no new content to download to the content recipient (column 9 lines 40-48,

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Apfel discloses a “NOUPDATE” message that notifies the recipient that there is no new content).

As for their dependent claims:

51. In reference to claim 33, Apfel teaches the method of claim 32 further comprising canceling future requests for the posted content without communicating such an intent to the content provider (column 8 lines 30-36, Apfel discloses cancelling auto-update feature).

52. In reference to claim 34, Apfel teaches the of claim 32 wherein the executing of the second program code at the content recipient so as to automatically and recurrently (i) access the content provider and (ii) initiate the receipt by the content recipient of the posted content (column 8 lines 22-33, Apfel discloses periodic updating).

53. In reference to claim 40, Apfel teaches the method of claim 32 further comprising executing third program code at the content provider so as to determine whether the content recipient possesses the second program code and, if the content recipient does not posses the second program code, to download the second program code to the content recipient (column 10 lines 7-33, Apfel discloses determining whether an update is available).

54. In reference to claim 41, Apfel teaches the method of claim 32, wherein electronically receiving the second program code at the content recipient from the content provider (column 6 line 63 – column 7 line 9).

55. In reference to claim 48, Apfel teaches the method of claim 32, wherein they are performed without providing an e-mail address of the content recipient to the content provider (column 8 lines 45-55, Apfel disclose a query which does not involve email address of the recipient).

56. The text of the relevant sections of Title 35, U.S. Code §103 is cited above.

57. Claims 36-39 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Stephens (US Patent No 6,557,026).

58. In reference to claim 36, Apfel teaches the method of claims 32. Apfel fails to teach wherein executing third program code so that the posted content, when received, is displayed behind a session if the session is active. However, Stephens teaches where information can be viewed on a computer by the use of overlaying windows in front of each other. Stephens discloses outputting a window to a display even though the window will not be visible to a user where the user can later be alerted of its presence (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60). It would have been obvious for one of ordinary skill in the art to modify to display a window (i.e the posted content) behind an active window as per the teachings of Stephens so as to later be alerted of its presence.

59. In reference to claim 37, Apfel in view of Stephens teach the method of claim 36, wherein the executing of the fourth program code at the content recipient comprises executing the fourth code so as to display the notice even if the session is active (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60, see above rationale).

60. In reference to claims 38,39, Apfel in view of Stephens teach the method of claim 37 above. Apfel fails to explicitly teach wherein the method further comprises executing fifth program code at the content recipient so that, upon an action related to the notice, the posted content burns through the session so that the posted content is visible to a user; and comprises executing fifth program code at the content recipient so that, upon an action related to the notice,

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the posted content is displayed in front of the session so that the posted content is visible to a user. However, Stephens teaches overlaying windows for multiple active programs. Stephens discloses bringing a window layer to the front of all other layers so that the layer can then be visible to a user (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60).

It would have been obvious for one of ordinary skill in the art to modify to display a window (i.e the posted content) in front of an active window as per the teachings of Stephens so as to be alerted of its presence.

Conclusion

61. The above rejections are based upon the broadest reasonable interpretation of the claims. Applicant is advised that the specified citations of the relied upon prior art, in the above rejections, are only representative of the teachings of the prior art, and that any other supportive sections within the entirety of the reference (including any figures, incorporation by references, claims and/or priority documents) is implied as being applied to teach the scope of the claims.

62. Applicant may not introduce any new matter to the claims or to the specification. For any subsequent response that contains new/amended claims, Applicant is required to cite its corresponding support in the specification. (See MPEP chapter 2163.03 section (I.) and chapter 2163.04 section (I.) and chapter 2163.06)

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMY M. OSMAN whose telephone number is (571)272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ramy M Osman/
Examiner, Art Unit 2157
September 1, 2008